

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JOSEPH DUNBAR, #129278,

Petitioner,

v.

Case Number: 10-cv-14203
Honorable Denise Page Hood

DAVID BERGH,

Respondent.

**ORDER TRANSFERRING CASE TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT PURSUANT TO 28 U.S.C. § 2244(b)(3)(A)**

Petitioner Joseph Dunbar, a state inmate presently confined at the Thumb Correctional Facility in Lapeer, Michigan, filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 (c)(3), alleging that he is incarcerated in violation of his constitutional rights. Petitioner is challenging his convictions for one count of first-degree criminal sexual conduct, MICH. COMP. LAWS § 750.520B, and felony firearm, MICH. COMP. LAWS § 750.227BA, imposed by a Wayne County, Michigan, Circuit Court jury in 1991. He was sentenced to forty to sixty years in prison for the criminal-sexual-conduct conviction and the mandatory two years in prison for the felony-firearm conviction.

Previously, Petitioner has filed habeas petitions in federal court, challenging the same convictions and sentences. *Dunbar v. Curtis*, No. 03-10232, 2005 WL 1606543 (E.D. Mich. June 8, 2005) (denied on the merits). The United States Court of Appeals for the Sixth Circuit denied a certificate of appealability, *see Dunbar v. Curtis*, No. 05-2061 (6th Cir. July 21, 2006), and the Supreme Court denied Petitioner's application for writ of certiorari. *See Dunbar v. Curtis*, 549 U.S. 1137 (2007). Petitioner also filed a prior second habeas petition, which was

transferred to the Sixth Circuit. *Dunbar v. Booker*, No. 07-10993, 2007 WL 1650700 (E.D. Mich. Jun 5, 2007) (transferred to Sixth Circuit as a second petition). For the reasons set forth below, the Court concludes, once again, that it must transfer this case to the United States Court of Appeals for the Sixth Circuit.

I.

The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), codified at 28 U.S.C. § 2241 *et. seq.*, amended 28 U.S.C. §§ 2244, 2253, and 2254, govern habeas corpus proceedings in federal courts. Pursuant to those amendments, an individual seeking to file a “second or successive” habeas petition must ask the appropriate court of appeals for an order directing the district court to consider the petition. *See* 28 U.S.C. § 2244(b)(3)(A); *Stewart v. Martinez-Villareal*, 523 U.S. 637, 641 (1998); *In re Wilson*, 142 F.3d 939, 940 (6th Cir. 1998). This requirement transfers to the Court of Appeals a screening function which the district court previously performed. *Felker v. Turpin*, 518 U.S. 651, 664 (1996).

Because Petitioner filed prior habeas petitions, this Court must transfer this petition to the Sixth Circuit.

II.

ACCORDINGLY, the Court **ORDERS** the Clerk of the Court to transfer this case to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631¹ and *Sims v.*

¹28 U.S.C. § 1631 provides in pertinent part:

Whenever a civil action is filed in a court . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action . . . to any other such court in which the action . . . could have been brought at the time it was filed . . . , and the action . . . shall proceed as if it had been filed in . . . the court to which it is transferred on the date upon which it was actually

Terbush, 111 F.3d 45, 47 (6th Cir. 1997) (“when a prisoner has sought § 2244(b)(3) permission from the district court, or when a second or successive petition for habeas corpus relief . . . is filed in the district court without § 2244(b)(3) authorization from this court, the district court shall transfer the document to this court pursuant to 28 U.S.C. § 1631”).

S/Denise Page Hood

Denise Page Hood
United States District Judge

Dated: October 28, 2010

I hereby certify that a copy of the foregoing document was served upon Joseph Dunbar, Reg No. 129278 Thumb Correctional Facility, 3225 John Conley Drive, Lapeer, MI 48446 on October 28, 2010, by electronic and/or ordinary mail.

S/William F. Lewis

Case Manager

filed in . . . the court from which it was transferred.